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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,970	06/14/2005	Gerhard Heitze	HM-641PCT	9495
40570	7590	05/03/2006	EXAMINER	
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			LANDRUM, EDWARD F	
			ART UNIT	PAPER NUMBER

3724

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,970	<b>Applicant(s)</b> HEITZE ET AL.	
	<b>Examiner</b> Edward F. Landrum	<b>Art Unit</b> 3724	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 June 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/14/2005</u> | 6) <input checked="" type="checkbox"/> Other: <u>Foreign Patent Document</u>           |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because both the greatest and least separation of the eccentric shafts (d and D) are not labeled. In Figure 3, there appears to be a portion of the double joint mechanism (10) missing that connects the double joint mechanism (10) to the hydraulic control unit (12). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

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2. The abstract of the disclosure is objected to because of the use of legal phraseology such as "thereon", "said", and "thereof". Correction is required. See MPEP § 608.01(b).

3. The disclosure is objected to because of the following informalities: The final word of the final paragraph of page 7 should be "extended" if referring to the lower control unit (12) in Figure 4. Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mckee (European Publication No. 0075448) in view of Fries (U.S Patent No. 3,643,537).

Mckee teaches (see Figure 1) a crank shear comprising two pairs of blades (4 and 5) mounted on blade holders (2 and 3), wherein the blade holders (2 and 3) are supported opposite each other in a vertical plane in a pair of eccentric shafts (circular portion found in the middle of both 2 and 3). The eccentric shafts are pivoted on levers (6 and 20) in double joint mechanisms (7 and 21). The blade holders (2 and 3) have many pairs of axially parallel bearing surfaces and radial projections (to the left of blade 4, between blades 4 and 5, and after blade 5; see Figure 1).

When support levers (6 and 20) are spread to form an approximately 90 degree angle an upper piston rod device (11) attached to the double joint mechanism (7) is fully

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extended and a lower piston rod device (25) attached to the double joint mechanism (21) is retracted. When support levers (6 and 20) are brought together to become substantially parallel to the strip of material being cut (30) the upper piston rod device (11) attached to the double joint mechanism (7) is fully retracted and the lower piston rod device (25) attached to the double joint mechanism (21) is extended. In this position the upper and lower double joint mechanisms (7 and 21) extended approximately linearly with each other (see Figure 1). Furthermore Mckee teaches (Pg. 6, lines 2—27; Pg. 7, lines 1-6) the upper blade carrier (2) being able to be swung to a position outside of its normal shearing position to make it easier to replace the blades (4 and 5).

Mckee teaches all of the elements of the current invention as stated above except the blade holders capable of being moved away from the material being cut to allow passage of the material.

Fries teaches (Col. 1, lines 1-9) a pair of shearing arms capable of being rotated out of position for the purpose of executing a variably adjustable number of miss-cuts between effective cutting operations.

It would have been obvious to have modified Mckee to incorporate the teachings of Fries to allow the cutters to be rotated about the eccentric shafts to non-cutting positions for the purpose of allowing material to be passed through the machine without being cut. This would allow the shearing machine to shear variable length work pieces without having to turn off the entire machine or take both of the cutting heads out of the machine.

Mckee fails to teach the exact shape or design of the radial projections or bearing surfaces found on the blade holders however it would have been an obvious matter of design choice to modify the modified Mckee by having the upper pair of blades arranged on inner, oppositely oriented bearing surfaces of a curved recess of the upper blade holder, and with the lower blades arranged on the outer bearing surfaces of a relatively narrow projection oriented towards the recess, since Applicant has not disclosed that having the bearing surfaces and blades formed in this way solves any stated problem or is for any particular purpose and it appears that the shearing device would perform equally well with the design of the blades in relation to the bearing surfaces in Mckee.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Elineau (U.S Patent No. 3,398,616), and Kagerhuber et al (U.S Patent No. 4,237,760) teach shearing devices that allow the blades to be positioned away from the material to be cut to allow passage of the material.

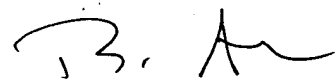
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EFL  
4/20/2006



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER